



U. S. Department of Justice

United States Attorney
Northern District of Illinois

Patrick J. Fitzgerald
United States Attorney

Federal Building
219 South Dearborn Street, Fifth Floor
Chicago, Illinois 60604
(312) 353-5300

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PRESS CONTACTS:
AUSA Juliet Sorensen (312)886-8027
Randall Samborn (312)353-5318

TWO SUBURBAN BUSINESSMEN INDICTED FOR ALLEGEDLY SELLING 1.6 MILLION BOTTLES OF SALAD DRESSING WITH FALSE EXPIRATION LABELS

CHICAGO – Two suburban businessmen who partnered to buy approximately 1.6 million bottles of salad dressing that were about to expire in 2003 were indicted on federal charges for allegedly relabeling the expiration dates and selling the dressing to unsuspecting wholesale distributors and discount retail stores, which then sold the products to consumers. In addition to announcing the charges today, federal authorities are urging anyone who has any of the mislabeled, expired salad dressing to contact them.

The case involves both 8- and 16-ounce bottles of assorted varieties of Henri's salad dressing, which is manufactured by ACH Food Companies, Inc., of Memphis. The company cooperated with the investigation. All of the bottles were originally labeled with "sell by" dates ranging between January and June 2003, but those labels were covered over with bogus extended expiration dates of either May 25, 2004, or July 25, 2004. Anyone with these bottles of salad dressing is urged to avoid consumption and to contact the Food and Drug Administration toll-free at 800-521-5782.

The defendants, **Ross Marks** and **Charles Farinella**, were each charged with three counts of wire fraud, one count of product tampering and one count of violating the Food, Drug and

Cosmetics Act for allegedly misbranding consumer food products, announced Patrick J. Fitzgerald, United States Attorney for the Northern District of Illinois, and Michael E. Cleary, Special Agent-in-Charge of the Chicago Field Office of the FDA's Office of Criminal Investigations. A federal grand jury returned the charges in a five-count indictment late yesterday. The indictment also seeks forfeiture of \$546,000.

Marks, 39, of Glencoe, was president of now-defunct Division Sales U.S., LLC, which was located in Des Plaines, and Farinella, 45, of Woodridge, was president of now-defunct American Merchandise Group, Inc., of Woodridge. Both companies were in the business of buying merchandise and food products and reselling them to discount stores and wholesale distributors throughout the United States.

They will be arraigned at a later date in U.S. District Court in Chicago.

According to the indictment, Marks and Farinella bought the 1.6 million bottles of Henri's salad dressing from ACH in May 2003 for \$50,000. ACH at that time advised Farinella in writing of the January through June 2003 expiration dates on the bottles and warned that ACH could only guarantee freshness of the products for 180 days past the "sell-by" dates on the labels.

Marks and Farinella allegedly met in May 2003 with an individual who brokered printing and graphic design jobs and who had previously done work for Division Sales, and ordered approximately 2 million small sticker labels to cover the original expiration dates with the false extended dates. Marks specifically requested a label that was sticky enough that it would destroy the original label underneath if removed, the indictment alleges.

Marks allegedly directed his assistant at Division Sales to type a letter falsely stating that ACH had granted permission to relabel the dressing bottles with the May 25, 2004 expiration date. He then instructed his assistant to photocopy the letter over a genuine letter from ACH so that the

ACH letterhead appeared at the top of the phony letter and the signature of the ACH vice president for quality assurance appeared at the bottom.

In June 2003, Farinella hired a company in St. Louis to relabel the bottles, saying that he had a letter from the manufacturer giving him permission to put new expiration date labels on the dressing. At the same time, Marks told sales representatives at Division Sales to sell the relabeled dressing, falsely telling them that he had permission from ACH to relabel the product. Marks also instructed them to offer to provide customers who inquired about the new label with a copy of the letter he had created that purported to authorize the relabeling, the indictment alleges. In August 2003, Marks instructed his assistant to record an outgoing voice mail message on a toll-free phone line maintained by Division Sales that falsely assured consumers of Henri's salad dressing that it was fresh and that the original expiration labels were incorrectly applied.

In April 2004, Farinella allegedly falsely assured a representative of ACH Foods that he had sought permission from the FDA to re-label the salad dressing and that the bottles had been relabeled in accord with FDA requirements on expiration dates. Farinella also told the ACH representative to refer consumer complaints to him, the indictment adds. Between June 2003 and July 2004, Marks and Farinella, through Division Sales and American Merchandise Group, respectively, allegedly sold more than 1.6 million bottles of Henri's salad dressing for approximately \$546,000 to discount retailers and wholesale distributors throughout the country.

The government is being represented by Assistant U.S. Attorney Juliet Sorensen.

If convicted, the wire fraud counts each carry a maximum penalty of 20 years in prison and a \$250,000 fine; product tampering carries a maximum penalty of 10 years in prison and a \$250,000 fine; and the FDCA violation carries a maximum penalty of 3 years in prison and a \$10,000 fine. As an alternative, the Court may impose a maximum fine equal to twice the loss to any victim or

twice the gain to any defendant, whichever is greater. Restitution is mandatory and the Court would determine the appropriate sentence to be imposed.

The public is reminded that an indictment contains only charges and is not evidence of guilt. The defendants are presumed innocent and are entitled to a fair trial at which the government has the burden of proving guilt beyond a reasonable doubt.

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